

EXHIBIT 25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BEDROCK COMPUTER)
TECHNOLOGIES LLC)

DOCKET NO. 6:09cv269

-vs-)

Tyler, Texas
1:15 p.m.

YAHOO!, INC.)

April 28, 2011

TRANSCRIPT OF TRIAL
AFTERNOON SESSION
BEFORE THE HONORABLE LEONARD DAVIS,
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF:

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COURT REPORTERS:

MS. JUDY WERLINGER
MS. SHEA SLOAN

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produced by a Computer.

1 correct?

2 A. That's right, sir.

3 Q. So in that respect you're a whole lot like
4 Yahoo! because Yahoo! didn't know anything about the
5 candidate code before they got sued in this case. You
6 understand that, don't you, sir?

7 A. I don't know one way or the other what they
8 knew.

9 Q. Now, sir, you talked about some of the testing
10 of Linux that you did, right?

11 A. Yes, sir.

12 Q. And you did that testing in order to support
13 Bedrock's -- you did that testing to find out whether
14 you could support Bedrock in this case; is that fair?

15 A. No, sir. I did that to understand the
16 advantages of the patent.

17 Q. Okay. But you did that after the lawsuit was
18 filed?

19 A. Yes, sir.

20 Q. And you did that knowing that one day you
21 would have to come down to this courtroom and face this
22 jury and share your results with the jury, right, sir?

23 A. Yes, sir.

24 Q. And you knew you had to share all the results
25 with the jury, right?

1 A. Yes, sir.

2 Q. But you can't do that, can you?

3 A. I can share all the results that I relied
4 upon, yes, sir.

5 Q. Well, sir, you didn't keep all the results,
6 did you?

7 A. I believe I reported on all my testing
8 results, yes, sir.

9 Q. You didn't keep all your results, did you,
10 sir?

11 A. I didn't keep the results as I was preparing
12 my tests, yes, sir; but once I carried them out, I kept
13 them.

14 Q. Okay. You didn't keep the results that you
15 were making while you were preparing your tests, right?

16 A. Yes, sir.

17 Q. Now, sir, during lunch -- and again, I don't
18 know if you can see these numbers here that I've
19 written. Can you see that, sir?

20 A. Yes, sir.

21 Q. Now, I read your deposition and I looked at
22 your report, and I think I've got this right. You
23 tested more than just 2.6.31, right, sir?

24 A. Yes, sir.

25 Q. You tested 2.6.26?

1 A. I believe so, yes, sir.

2 Q. Do you give me the test results for that?

3 A. No, sir.

4 Q. You tested 2.6.28, didn't you?

5 A. I believe so, yes, sir.

6 Q. Did you give Yahoo! or me the test results of
7 that?

8 A. No, sir.

9 Q. You tested 2.6.34, didn't you?

10 A. I believe so, sir, yes, sir.

11 Q. Did you give Yahoo! or our attorneys or my
12 colleagues or me the test results of that?

13 A. No, sir.

14 Q. And the only test results you gave us was
15 2.6.31, right?

16 A. Yes, sir.

17 Q. You know, I hadn't noticed this until I wrote
18 this down at lunch, but you tested 2.6.26. You didn't
19 give us the results, right, sir?

20 A. That's correct.

21 Q. Yahoo! uses 2.6.27, which you didn't test,
22 right, sir?

23 A. That's correct.

24 Q. You tested 2.6.28, and you didn't give us the
25 results, right?

1 A. That's correct.

2 Q. Yahoo! uses 2.6.29, but you can didn't test
3 that?

4 A. That's correct.

5 Q. Dr. Nemes talked yesterday about a zigzag
6 pattern. I'm kind of just zigzagging going back and
7 forth here.

8 So the four versions of the code that you
9 tested, you only shared with us the results of one?

10 A. The results were all the same, so that's what
11 I shared, sir.

12 Q. Sir, we don't have the backup data to
13 determine whether the results are all the same. We just
14 have to take you on your word, right?

15 A. No, sir. You could have replicated the tests.
16 I gave all that information.

17 Q. We could replicate your living room test?

18 A. Absolutely.

19 Q. You knew that you were supposed to be sharing
20 the test results with this jury whether they were good
21 or bad or, as the movie used to go, ugly?

22 A. That's what I did, sir.

23 MR. STEVENSON: Objection. May I
24 approach, Your Honor?

25 THE COURT: Yes, you may.

1 of minutes ago that all the test results are the same
2 and that's why he didn't produce it. He didn't say he
3 didn't produce them because of some Court order. He
4 didn't say he didn't produce it --

5 THE COURT: All right. You can go back
6 and do it on redirect -- or recross.

7 (Bench conference concluded.)

8 Q. (By Mr. Morisseau) As I was saying, Dr. Jones,
9 you knew that you were going to have to come down here
10 and share all the test results, whether they were good
11 or bad or ugly, to the members of the jury. You knew
12 that, sir?

13 A. Yes, sir.

14 Q. But you don't have them, do you, sir?

15 A. I'm sorry, couldn't hear you.

16 Q. You don't have them, do you, sir?

17 A. I reported the results that are all
18 consistent, yes, sir.

19 Q. You don't have the test results of 2.6.26,
20 2.6.28 or 2.6.34, right, sir?

21 A. They are consistent with 2.6.31, and I didn't
22 run all the same tests.

23 Q. You didn't run all the same tests; is that
24 right, sir?

25 A. No, sir. What I did was I did preliminary

1 experiments to find out that they were all the same and
2 then ran my tests on the one that was all the same.

3 Q. Your preliminary experiments, you ran it on
4 three and then just picked one?

5 A. I ran it on four and found they were all the
6 same, equivalent, and then reported those results.

7 Q. You found that they were all the same, but the
8 version you picked was kind of the one in the middle
9 instead of the first one or the last one?

10 A. Yes, sir.

11 Q. I want my question to be clear. I'm not
12 asking whether the test results are consistent or not;
13 I'm asking whether you have the results for the test
14 results 2.6.26, 2.6.28, 2.6.34 so we can see and so the
15 jury can see?

16 A. No, sir, I don't.

17 Q. Now, sir, in your report, I don't know if you
18 mentioned this or not, but I have read your report
19 several times and there is a section in there about a
20 statistical analysis. Do you recall that section of
21 your report?

22 A. Yes, sir.

23 Q. And as I understand it, when Linux is
24 delivered to someone like Yahoo! there's a length of a
25 list which is kind of hard-wired -- not hard-wired but

1 straighten me out. And I want to go through these one
2 at a time.

3 You did not test for denial of service, did
4 you?

5 A. That's correct, sir.

6 Q. You didn't test Yahoo!'s network architecture,
7 did you?

8 A. I did not, sir.

9 Q. You didn't try to duplicate Yahoo!'s network
10 architecture, did you?

11 A. That's correct.

12 Q. You didn't test the versions of Linux that
13 Yahoo! uses?

14 A. That's correct.

15 Q. You didn't keep all your testing data?

16 A. That's correct.

17 Q. No one else has confirmed your test results,
18 have they?

19 A. Again, I found results that agree with mine,
20 but I have not had someone go and verify my exact
21 numbers.

22 Q. And that's what was my question. No one, no
23 one, not your interpretation of other test results, my
24 question was no one has confirmed your test results; is
25 that right?

1 A. Again, people have gotten the exact same
2 numbers, but I don't have someone confirming my test
3 results, that's right. That's me.

4 Q. One last question. No one's confirmed your
5 living room test?

6 A. That's right.

7 Q. And you made several mistakes, right, sir?

8 A. In filling out that data, yes, sir.

9 Q. Well, you made mistakes on the witness stand
10 this morning when you testified about the wrong version
11 of code, right?

12 A. Yes, sir.

13 Q. And when you talked about the memory leak,
14 right, sir?

15 A. That wasn't a mistake, sir.

16 Q. And if you had to do it all over again, you
17 would do a few things differently, wouldn't you?

18 A. I would fill out that chart differently, and I
19 would certainly know the version of code, yes, sir.

20 MR. MORISSEAU: Your Honor, I pass the
21 witness.

22 THE COURT: All right. Redirect.

23 REDIRECT EXAMINATION

24 BY MR. STEVENSON:

25 Q. Dr. Jones, just a few follow-up questions.

1 Let me ask you about these code versions, and
2 the version we had was 2.6.9 versus 2.6.18.

3 Now, I noticed some of the line numbers were
4 off a little bit. Other than that, is there any
5 substantive difference in those two codes?

6 A. No, sir. All those codes with respect to the
7 candidate and generation code, those codes are the same
8 thing.

9 Q. And are your opinions any different from 9
10 versus 18?

11 A. No, sir. I've examined all of them.

12 Q. Is the code the same, essentially?

13 A. Yes, sir.

14 Q. Now, let me ask you a little bit about the
15 Turner tests.

16 You were asked some questions about
17 Mr. Turner, remember that, the Xs and the checks?

18 A. Yes, sir.

19 Q. What was Mr. Turner testing?

20 A. His results were focused on denial of service
21 tests, sir.

22 Q. And how many advantages are there for the
23 patented invention?

24 A. Well, there's denial of service protection
25 advantages as well as efficiency advantages, so two.

1 Q. And those are separate, right?

2 A. Yes, sir.

3 Q. Did your 10- to 20-percent testimony about
4 performance gains depend in any way, shape, or form on
5 denial of service?

6 A. No, sir.

7 Q. I mean, let's pretend denial of service never
8 existed, that there was never a hacker born.

9 Would it matter, then, to your performance
10 testimony?

11 A. No, sir. I was not trying to simulate or show
12 what would happen with a denial of service attack. I
13 was trying to show the efficiency gains for ordinary or
14 regular peak traffic.

15 Q. So let's talk about those efficiency gains.

16 One thing you didn't put on this chart is
17 tested real-world IP addresses and mixes.

18 A. Yes, sir.

19 Q. Is that the big difference between you and
20 Dr. -- or Mr. Turner?

21 A. Yes, sir.

22 Q. And explain to the jury, despite all these,
23 what's the big difference in your tests versus his
24 tests?

25 A. Yes, sir. Well, in the tests that I ran, I'm

1 All right. Mr. Cassady, you may proceed.

2 Q. (By Mr. Cassady) I believe when we left off,
3 Mr. Weinstein, I was asking you if you had done any
4 calculations of what would happen to Yahoo! if they were
5 hit by a denial of service attack today; is that right?

6 A. Yes, sir, I did.

7 Q. Okay. Did you perform any calculations as to
8 what would happen to Yahoo! if they were hit by a denial
9 of service attack today?

10 A. I did.

11 Q. Okay. And what was that calculation?

12 A. What I did is I went to financial information
13 that I was furnished from Yahoo! and I -- based on that
14 information I made a calculation of what losses, the
15 revenue losses would be if Yahoo!'s website went down.

16 Q. Okay. And I'm putting it up right now. Is
17 this the chart with the calculations you're referring
18 to?

19 A. Yes, sir.

20 Q. Okay. Can you explain to the jury what we're
21 looking at?

22 A. Yes. I had access to certain Yahoo! financial
23 information that showed its annual revenues. And what I
24 did is converted that to revenue per hour and also
25 revenue per day based on the financial information and

1 then a description of some of that information by a
2 gentleman from Yahoo!, Samuel Wolff.

3 So what I found is that if its site --
4 Yahoo!'s site were down for just one hour, it would lose
5 approximately \$289,000 in revenue based on its average
6 hourly revenue. And if you multiply that out to a day,
7 it would be about \$6.9 million.

8 Q. So if Yahoo! is hit by a denial of service
9 attack and they're down for a day, you're saying it
10 would be \$6.9 million just in the revenue that they
11 would lose?

12 A. Correct.

13 Q. That doesn't take into account the long-term
14 effects of customers having problems with Yahoo!, right?

15 A. Right. And we know that there is an impact.
16 If customers are frustrated because they can't get to a
17 site, then on average over time they go to that site
18 less often.

19 Q. Okay. And if it happened more than one day in
20 a given year or over the time period that this patent
21 has been used by Yahoo!, are we talking about
22 multiplying times every day that they get hit like that?

23 A. Correct.

24 Q. I think we've finished talking about factors
25 7, 8, and 9; is that right?